No. 85-1600

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1985

BOARD OF COUNTY COMMISSIONERS OF BERNALILLO COUNTY, ET AL.,

Petitioners,

v.

AL FRIEDMAN,

Respondent.

PETITIONERS' REPLY BRIEF

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INTRODUCTION

This reply brief demonstrates the need for this Court to provide guidance concerning the use of a religious symbol, such as a cross, by state and local governments. Contrary to Respondent's claim that this is a parochial issue, seals containing religious symbols enjoy wide use. The record also fails to support Respondent's claim that the motto "With This We Conquer" refers only to the cross. The divergence of case law, when combined with the widespread use of crosses and similar symbols on state and local government seals, underscores the potential harm and mischief that may well occur if the Tenth Circuit Court of Appeals' decision that the Bernalillo County seal violates the Establishment Clause is allowed to stand.

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ARGUMENT

I. STATE AND LOWER FEDERAL COURTS CLEARLY REQUIRE GUIDANCE ON THIS IMPORTANT ESTABLISHMENT CLAUSE ISSUE.

The issue of whether local governments can display a cross on public property has been the subject of litigation in both state and federal courts for the past twenty years. In addition to those cases cited by Respondent,[1] several other courts have considered the constitutionality of a local government's use of a cross on public property and have

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[1]Brief in Opposition To Petition For A Writ Of Certiorari to the United States Court of Appeals for the Tenth Circuit (Opposition Brief) at 6.

upheld such use. *See Paul v. Dade County*, 202 So. 2d 833 (Fla. Dist. Ct. App. 1967), *cert. denied*, 207 So. 2d 690 (Fla. 1967), *cert. denied*, 390 U.S. 1041 (1968) (the county's display of a lighted cross on county courthouse during the Christmas season did not amount to an establishment of religion in violation of the First Amendment); *Eugene Sand & Gravel, Inc. v. City of Eugene*, 276 Or. 1007, 558 P.2d 338 (1976), *cert. denied*, 434 U.S. 876 (1977) (large concrete cross displayed in municipal park as veteran's war memorial does not violate constitutional restrictions against an establishment of religion, despite the fact that the cross is an admittedly religious symbol); *Birdine v. Moreland*, 579 F. Supp. 412 (N.D. Ga. 1983) (descendants could select religious grave marker, including a cross, to be paid for by the state and placed in cemetery condemned by state to memoralize their ancestors).

Although this Court in the past has declined to review this important Establishment Clause issue, both state and lower federal courts are currently in great need of guidance.[2] The time has come for this Court to further delineate the limits of the Establishment Clause. This case provides the ideal opportunity to do so.

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[2]Justice Brennan, in his dissenting opinion in *Lynch v. Donnelly*, 465 U.S. 668, 695 (1984), noted that "[t]he Court's decision [in *Lynch*] implicitly leaves open questions concerning the constitutionality of the public display on public property . . . of other distinctively religious symbols such as a cross."

II. NUMEROUS LOCAL GOVERNMENT SEALS AND COATS OF ARMS THAT BEAR CROSSES ARE USED IN THE SAME MANNER AS THE BERNALILLO COUNTY SEAL.

Contrary to Respondent's conjecture, neither the composition of the Bernalillo County seal, nor the use to which the County puts the seal, is unique. This case is not "of purely parochial interest,"[3] as Respondent contends. This case is of national significance precisely because numerous local governments across the country have adopted official seals and coats of arms that bear crosses and that are put to uses similar to that of the Bernalillo County seal. For example, the following seals and coats of arms depicted in Petitioners' Chart[4] are impressed on local government documents and imprinted on their stationery: Coral Gables, Florida; Princeton, Massachusetts; Las Cruces, New Mexico; York, Pennsylvania; Pensacola, Florida; New Rochelle, New York; Warwick, Rhode Island; and Rockland, Massachusetts. The seals and coats of arms displayed in the Chart are also emblazoned on the sides of the police cars of Coral Gables, Florida; Princeton, Massachusetts; York, Pennsylvania; New Rochelle, New York; Lincoln, Rhode Island; Warwick, Rhode Island; Rockland, Massachusetts; and Zion, Illinois.

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[3]Opposition Brief at 4.

[4]See Sampling of Current Government Flags, Seals, and Coats of Arms That Symbolize America's Religious Heritage contained in Petitioner's Petition For Writ of Certiorari (Chart).

In fact, many of the seals and coats of arms contained in the Chart are used even more extensively than the Bernalillo County seal. For example, the coat of arms of Lincoln, Rhode Island appears not only on police cars, but also on police uniforms, fire trucks, highway trucks and public works department vehicles. The coat of arms of Zion, Illinois appears on police cars, police badges, street signs, various city buildings, and the town water tank. The Zion town motto, "God Reigns," also appears on a ribbon above the coat of arms on police badges and fire and rescue badges.

The state flags of Hawaii, Maryland, Oklahoma, Florida, and Georgia depicted in the Chart are flown at state capitols, public schools, prisons, and at numerous other governmental buildings at both the state and local level. Clearly, these uses are just as extensive, if not more so, than the use to which Bernalillo County puts its seal.

III. THE MEANING OF "CON ESTA VENCEMOS" IS AMBIGUOUS.

The precise meaning of the Spanish motto, "Con Esta Vencemos," contained in the Bernalillo County seal was never proven at trial. The courts below recited the phrase as meaning "With This We Overcome" or "With This We Conquer." [App. 3a, 20a, 45a.] Although Respondent insists on interjecting the word "cross" into the motto,[5] the Spanish language experts who testified at trial gave conflicting translations.

The Respondent's expert stated that the word "esta" ("this") contained in the motto could refer only to the

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[5]Opposition Brief at 3.

cross. [Transcript of Hearing (Tr.) pages 16-17.] However, on cross-examination he admitted that "esta" could also refer to "la tierra" ("the land"), "la totalidad" ("the totality"), "la suma" ("the sum"), or "la historia" ("the history") of Bernalillo County [Tr. pages 18-20]. The Petitioners' expert stated that "esta" referred to the totality or the whole of the seal. [Tr. pages 223-24.]

The Tenth Circuit also acknowledged that "[t]he evidence is not completely clear on the meaning of 'esta' or 'this' in the motto . . . ." [App. 4a.] Therefore, it is disingenuous of Respondent to insist that the meaning of the motto is crystal clear and to suggest that the motto can only mean "With This [Cross] We Conquer."

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CONCLUSION

The Establishment Clause issue presented by this case is by no means novel or unique. Only this Court's guidance can prevent ad hoc rulings by the lower courts and avert the potential mischief engendered by this matter.

For these reasons, the Supreme Court should grant the Petition For A Writ of Certiorari.

Respectfully submitted,

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